

DRAFT

Minutes of the Meeting of the Delta Protection Commission

November 16, 2000

1. Call to Order.

The meeting was called to order at 6:35 p.m. by Chairman Patrick McCarty. Members present were: Chairman McCarty, Vice Chair Mello, and Commissioners Brean, Broddrick, Cabaldon, Calone, Curry, Ferreira, Gutierrez, Macaulay, McGowan, Shaffer, and Thomson. Members absent were: Commissioners Canciamilla, Coglianese, Matthews, Nottoli, Salmon, and Sanders.

2. Public Comments.

Patrick Wright, the new Director of CALFED Program, said he comes to his position from the Resources Agency. Previous to joining the Davis administration, he worked for almost 10 years at the EPA and Department of Interior coordinating water policy issues. He said CALFED is in a transition and his priorities now are to ensure that the deadlines in the Plan and the Record of Decision are met. He noted that many have concerns about whether CALFED will be able to deliver its commitments. He said he believes that successful implementation of the program will be through local implementation. He described the Sacramento "1086" planning process as an example of local planning and implementation. He suggested the Delta Protection Commission could enter into the same type of planning process and vision development. He does not want the vision to come from CALFED; it should come from the local areas. He said the CALFED program is willing to support those efforts. Mr. Wright said the Yolo Bypass planning process and the Cosumnes Preserve are examples of successful planning processes, and noted that those programs have been successful in obtaining funds to carry out their programs. He said he had talked to Commissioners who are also CALFED members and has urged this approach. He noted that the Commission is both outside and inside the CALFED process, and is in a position to have a major influence on the implementation of the CALFED program.

3. Minutes of Last Meeting.

On a motion by Commissioner Calone and a second by Vice Chair Mello, the draft minutes were adopted unanimously by voice vote.

4. Chairman's Report.

Chairman McCarty said the next meeting is scheduled for Thursday, December 14, 2000 for consideration of readoption of the Plan and adoption of the policies in the Plan as regulations. Chairman McCarty noted that Marci Coglianese was elected Mayor of Rio Vista, Barbara Matthews was elected to the Assembly, Joe Canciamilla was elected to the Assembly, and Ex-Commissioner Tom Torlakson was elected to the State Senate. Chairman McCarty asked for support for resolutions for Senator Patrick Johnston, Fred Harris, Barbara Matthews, and Joe Canciamilla. He said the results of the North Delta Reclamation District elections are complete; as of January 1, the Commissioners North Delta representatives will be Topper Van Loben Sels from RD 551 and Daniel Wilson from RD 563. Chairman McCarty welcomed Steve Macaulay, representing Department of Water Resources, to the Commission.

5. Commissioner Comments/Announcements.

Vice Chair Mello reported that Tyler Island had received a dredging permit, but received it late. They requested a time extension to dredge beyond the "work window"; that request has been denied so only 60% of the dredging work will be completed this dredging season.

Commissioner Cabaldon noted that Ex-Commissioner Heather Fargo was elected Mayor of Sacramento.

Chairman McCarty announced that he had approved acquisition of permanent nameplates for the Commissioners, as of 2001.

6. Attorney General's Report.

Christine Sproul gave the Commission an update on the status of the three lawsuits regarding the CALFED environmental document and Record of Decision, one of which names the Commission. She noted that several agencies have asked to be dropped from the suit, including the Delta Protection Commission, because they did not sign the Record of Decision. She said there is a motion to combine the two State court actions in Sacramento. The State has asked that the State law claims be dropped from the third federal suit. She said the administrative record is being prepared--about 250,000 pages. She said after various motions and the administrative record are filed, there will be a request to drop certain parties, for example the Delta Protection Commission, which did not sign the Record of Decision.

7. Executive Director's Report.

Vice Chair Mello thanked Ms Halverson Martin for setting up the meeting with him and Commissioner Nottoli and staff, and said a number of comments were made. He said the Commission has already done a lot of brainstorming to prepare ideas of how the CALFED program can reach its goals while protecting the regional agricultural economy. He said there is a lack of coordination between the CALFED agencies and each agency seems set on protecting its own turf. He said CALFED wants to improve the levee maintenance program, but the Fish and Wildlife Service does not seem to be helping solve issues associated with dredging for levee maintenance. He suggested CALFED could be doing more to gain consensus on key matters. He said it appears the Delta is taking the brunt of the impacts developed by others to solve the State's problems. He questioned if the Commission should revisit these issues based on the lack of response from CALFED in the past. He said the grant process for acquisition circumvents the required public review process; he feels that is inappropriate. Vice Chair Mello said the Commission suggested that the 77,000 acres of publicly owned land be inventoried and analyzed for resource values; that has not happened. He said he thinks CALFED needs a plan, coordination among the members, coordination with the Counties and their HCPs, and a better permit process that allows discussion of the regulatory issues. He said sometimes coordination with CALFED seems like an exercise in futility.

Ms Aramburu said a number of issues were covered. She said the Commission is working with other agencies on a recreation strategy for CALFED and the preliminary ideas will hopefully be expanded. She said there was discussion of the need for CALFED to proceed with a baseline inventory of resources in the Delta, and elsewhere. She noted the Commission wants to continue to be involved in that process. She said the issue of mitigation for loss of agricultural land was deferred to the implementation component of CALFED. Ms Aramburu said there needs to be a strategy for mitigation developed and it needs to be prepared in partnership with the local governments. She said there are tasks in the work plan and strategic plan that will help to carry out the goals in the Commission's legislation.

8. Briefing on Prospect Island Habitat Enhancement Project, Solano County

Chairman McCarty said the Commission would be briefed on the proposed changes to the habitat enhancement project that is sponsored by the Corps of Engineers on Bureau of Reclamation property, with the Department of Water Resources as "local partner". He introduced Guy Brown of the Corps.

Ms Aramburu said she prepared a staff report summarizing the history of this project, and the Commission's comments submitted to date. The project proponents reviewed the staff report. The project proponents have requested one change. On page three, under Project Funding, the report should read: In 1999, \$886,000 of Category III funds...(delete \$915,000). She noted that the Commission may take action on the briefing item.

Guy Brown, Corps of Engineers, introduced additional Corps staff and staff from Department of Water Resources. Mr. Brown reviewed the project using a slide presentation. He reviewed the project location, surrounding property owners. In 1986, the Corps was given authority to spend five million dollars per project to develop enhancement/mitigation projects associated with Corps projects. The program requires a 25% match. In the Prospect Island project, the partner is the Department of Water Resources. A preliminary planning report (reconnaissance report), feasibility reports, and environmental review were prepared previously. The project is now in the final design phase. Construction of the Prospect Island project is proposed for June 2001. The previous design indicated that the Ship Channel breach would need more armoring than previously planned and would cost more than allowed by the federal program. The new design will relocate the second breach to the northern end of Miner Slough. It would be preferable for fish to have open breaches, but that depends upon acquisition of the Stringer property; that is not anticipated. The northern opening would be an arched fish passageway. Mr. Brown said the hydrologic modeling would provide better water circulation in the site, moving from north to south. He indicated the location of the proposed channel which remain wet at all times. The water elevation in the site would vary with the tides, ranging from 2 feet to 5 to 6 feet.

Mr. Brown said an environmental document was prepared and circulated last year, resulting in a finding of No Significant Impact. The determination was challenged in court by the Ryer Island Reclamation District and Islands Inc. One of the key issues is seepage onto Ryer Island associated with flooding of Prospect Island. He said the US Attorney believes the determination is defensible. The Bureau will release a revised environmental assessment in January or February 2001. It will include the new biological opinions from FWS and NMFS, and an analysis of the impacts of the design changes. It will also change the basis of the analysis of the Island. Originally, the Island was analyzed as agriculture, however, the Island has not been farmed since 1994, the Island has flooded six times since 1980, and DWR prepared an analysis of the agricultural value of Prospect Island stating it is of limited value for agriculture because of the cost of maintaining the levees, having to pump the Island when it floods, and maintaining an infrastructure on the Island. DWR staff will mail the economic analysis report to Delta Protection Commission staff. Mr. Brown estimates that construction may start as early as June 2001, with the construction covering two years. He said 2003 to 2007 would be a monitoring period. He mentioned that DWR has set aside a trust for long-term maintenance of the project. The total project cost is \$6.2 million, 75-25 match. The maintenance cost for the Fish and Wildlife Service is estimated to be \$69,000 per year. Mr. Brown said DWR has approved a Negative Declaration and has a Fish and Game permit.

Chairman McCarty asked for questions from the Commission.

Commissioner Calone asked if there are levee breaches now; Mr. Brown said no. He asked why there would not be a break on the Deepwater Ship Channel side; Mr. Brown said more riprap would be required and a cofferdam would be required, raising the project cost. Commissioner Calone asked if the Corps would continue to maintain the levee along the Deepwater Ship Channel; Mr. Brown said yes. Commissioner Calone asked if the water moving through the proposed breaks would have any impact to the Ryer Island levees; Mr. Brown said the project

would include vegetated benches near the northern opening that will result in no impact to the Project levee on Ryer Island. Near the southern breach, vegetated islands will reduce wave fetch and minimize impacts to the Ryer Island levee. Commissioner Calone said if there is a problem, will the Corps help Ryer Island fix the levee; Mr. Brown said the Corps has authority and funding to project such assistance.

Vice Chair Mello commented that there was no pre-project condition ascertained regarding seepage and felt it was inappropriate to state that the project would not result in seepage on Ryer Island. He said that every flood has resulted in seepage on adjoining islands. He described how DWR had installed wells to study "existing condition" seepage as they planned the North Delta Project in the 1980s. He asked why the Corps did not do similar pre-project monitoring; Mr. Brown said he was not involved at that time, but said if there is a need for monitoring, the Corps will talk to people about how much modeling is needed. He said the Corps' modeling and Ryer Island's monitoring demonstrate that the greatest factor is extreme flows in Miner Slough scouring the bottom, opening up the pervious bottom, and resulting in seepage on Ryer and Prospect Islands. The model shows that if there is not high water and there is a sediment layer on the bottom of Miner Slough there may be seepage on Ryer Island, but that the seepage would be a very small impact--no significant impact. He said he would be willing to talk to the neighbors to determine the significance of that impact. Vice Chair Mello asked why DWR did the study of agriculture on Prospect Island; Mr. Brown said DWR is a partner in the project and they have an economics unit. Vice Chair asked if "safe harbor" would be granted to nearby landowners and reclamation districts for water intakes; Mr. Brown said that is up to Fish and Wildlife Service and their past correspondence said they expect no changes due to the project and would relook at the matter in the future if needed. Mr. Brown said Fish and Wildlife Service staff would be willing to come and meet with landowners. Vice Chair Mello said additional water is needed for wetland vegetation (over agriculture) and asked the source of that water; Mr. Brown said he does not have specific numbers but since the Island has been flooded since 1994 it will have no different impact than has been in place much of the last 20 years. Vice Chair Mello asked if there will be any problems with methyl mercury on the site; Katie Wadsworth, DWR, said UC Davis did a study on Prospect Island and found that there would not be a problem on Prospect Island. Vice Chair Mello asked about excavation in the 1,000 foot "no excavation zone" near Ryer Island; Mr. Brown did not know; Ms Aramburu said that may be due to using a map from an earlier document--she would check into that matter. Bob Koenigs, Corps, said the no excavation zone was in an earlier document and purpose was to minimize not preclude excavation; no other excavation is proposed in the 1,000 foot wide zone. Vice Chair Mello asked if opening the Island to tidal action would contribute to tidal excursion and possible impacts to water quality in the North Delta; Commissioner Macaulay said the 1980 agreements is locked in place and all requirements will be met.

Chairman McCarty asked for public comments or questions.

Tom Hester, farmer and reclamation district trustee on Ryer Island, said he believes seepage on Ryer Island from this project will have a significant impact and will affect levees and crop yield. He said the project should not proceed until mitigation measures are developed and put in place.

Chris Neudeck, KSN, said he is representing RD 501, Ryer Island. He said the RD did undertake analysis the Corps should have undertaken, the study was small and attempted to prove seepage. The farmers on Ryer Island are being ignored and told that there is no seepage, and there is no impact associated with the project. He said the data collected by the RD is inconclusive. Mr. Neudeck said the only similar project is Delta Wetlands and there was never an argument about if there will be seepage and millions of dollars have been spent studying the project. He pointed would the different efforts of the Delta Wetlands project, a private project, versus the Prospect Island project, proposed by public agencies. He said the Corps needs to carryout seepage studies BEFORE the project is constructed. He said its appalling that the Corps

is ready to construct the project and says there is no problem. Mr. Neudeck said he supports creation of habitat, but it needs to be done right.

Pete Rabbon, General Manager, State Reclamation Board, raised the issue of long-term maintenance of the levees. He said the Reclamation Board is seeking compatibility, not comprise, because the Board has responsibility and liability to the public and to the federal government. Mr. Rabbon said Ryer Island has a federal levee and the State of California is holding the federal government harmless for the operation and maintenance of that levee. The State is having Ryer Island take responsibility for the levee, and Ryer Island is holding the State harmless. He said if something happens, Ryer Island will be sued and the State will also be held responsible, regardless of any agreements with local agencies. The issue comes down to the ability to operate and maintain the levee when there are endangered species. This is an issue throughout the State; an issue that needs to be addressed through CALFED and through flood control projects. He said the Board wants the project to be successful; if the project is successful there will be more endangered species. What we don't want is any compromise of public safety as a result of that. Ryer Island has a current practice to maintain its levees; the Reclamation Board wants to be assured that Ryer Island can continue to maintain the federal levee in the same manner they maintain the levee today. The request is for assurances that what is done now can continue into the future. He said conversations and written communication on this issue are on going, and the issue is not yet resolved.

Vice Chair Mello asked what would happen if there is no assurance forthcoming; Mr. Rabbon said the Reclamation Board has an obligation to the Corps and will do every thing possible to ensure they can maintain that obligation. Vice Chair Mello asked if the Reclamation Board is seeking "safe harbor" for levee maintenance; Mr. Rabbon said they are simply looking for assurances that the levee maintenance practices can continue in the future.

Neil Bardack of McQuaid, Metzger, Bedford, and Van Zandt, legal counsel for Ryer Island, stated there are two issues in court: damage issues, stayed pending Supreme Court review of the immunity of federal flood projects in a pending case, and in federal district court regarding the environmental document. He said the federal government appears to be taking steps to avoid facing the seepage problem. He noted that the project budget figures presented by Mr. Brown show there is inadequate funding for the project as conceived; they will probably not be able to bid the project while there is pending litigation over the environmental document, and if they have to address the seepage issue the project will be "dead on the table", mostly because they refuse to address the seepage issue and its impacts to Ryer Island. He said no one can predict what a federal judge will do in this case, and thus when or if the project will go forward. He said there are serious issues that will affect other landowners as these projects multiply through the Delta.

Chairman McCarty closed the public comment period and brought back to the Commission for discussion and comment.

Ms Aramburu suggested the Commission could reaffirm the comments presented in the past now before the preparation of the revised environmental document, or wait until the revised environmental document is released, or both. She said she would forward information from the economic analysis because that is a significant change.

Chairman McCarty said the Commission has an obligation to address the issues of concern to the Commission and to the Delta, and previously addressed issues should be restated and any new information should also be analyzed prior to preparation of the revised environmental document.

Commissioner Macaulay suggested that the issue of "safe harbor" is a significant issue nationwide, and the suggestion that Fish and Wildlife Service staff can talk to nearby landowners

is a very positive suggestion and the Commission should encourage that discussion, particularly in light of Mr. Rabbon's comments.

Commissioner Broddrick, commenting generally on maintenance practices, said the debate is a general, statewide debate. He said the habitat on the waterside of levees does provide habitat and the concerns of Fish and Wildlife Service are not specific to Prospect Island or Ryer Island, but are generic statewide. He said the Reclamation Board is asking for support of "existing maintenance practices" and that term may in fact be the nut of the issue. He said all the Reclamation Districts understand the issues that have been raised. He said there has been positive communication with the Refuge Unit of the Fish and Wildlife Service, the group that would take over long-term management of the site, and a similar discussion needs to take place with the Endangered Species Unit of the Fish and Wildlife Service.

Commissioner Shaffer commented that the process of the federal agencies is to acquire the property first, and develop a project later. He suggested that the Commission comment that the process should be reversed and analysis of the viability and costs of a project should take place prior to acquisition to ensure there is a sound project prior to acquisition. He also expressed concern about the proposed change in the project from agriculture, to non-agriculture. He said that was a key issue of the Department of Food and Agriculture.

Chairman McCarty directed staff to prepare a comment letter that would be reviewed by the Chair prior to submittal. On a motion by Vice Chair Mello, and a second by Commissioner McGowan, the Commission approved the action by voice vote.

9. Briefing on Scientific Studies of the Delta Cross Channel

Chairman McCarty introduced Ron Ott of the CALFED staff for a briefing on the currently underway studies of the Delta Cross Channel, as part of the Phase I evaluation of the CALFED preferred Through Delta Alternative.

Mr. Ott made a presentation using overhead projections. He said CALFED is doing one of the most extensive studies ever done in the Delta. He said the focus of the studies is the Delta Cross Channel, which connects the Sacramento River and the Mokelumne River. He said the Record of Decision directed CALFED to study operation of the Cross Channel to protect out-migrating salmon smolts and to protect exported water quality. Currently there are fixed periods when the gates are open and when the gates are closed. The goal is to evaluate alternative operations that would protect fisheries and water quality. In addition, CALFED is charged with evaluating a screened intake on the Sacramento River of up to 4,000 cfs. The challenge is that a fish screen would block up-migrating fish. He said there are multiple agencies contributing staff and expertise to carry out the studies. The current studies are underway, a public workshop was held, and later a three-year study plan will be drafted by February 2001.

Mr. Ott said the current studies evaluate how fish move downstream and upstream, how much water goes through the cross channel, do the fish move with the tide and which tide, do the fish travel in the day or in the night, how many fish are attracted by the Sacramento River water, does the side of the River affect fish moving into the Cross Channel, how many fish are trapped behind the gates when they are closed. He said fish had radio tags added and movement monitored. He said the USGS is mapping water flow data, mapped every 10 minutes. He said colored fish were dumped into the river--15,000 at a time, on each side of the River, and monitored to see if the fish entered the Cross Channel. They have trapped fish at Chipps Island, marked and released them, and followed them upstream.

Chairman McCarty complimented Mr. Ott on his enthusiasm.

Vice Chair Mello asked where in the water column the smolts are located; Mr. Ott said the smolts' location in the water column is being studied. Vice Chair Mello about the drogue in Georgiana Slough; Mr. Ott said one was released three miles north of the Cross Channel, travels past the closed Cross Channel gates, and when the gates opened, turned around and traveled up to and through the Cross Channel. Vice Chair Mello said he has never been aware of the Slough running upstream; Mr. Ott said Georgiana Slough can run from 0 to 8,000 cfs, and the reverse flow is approximately 400 cfs and the current runs faster below the surface.

Commissioner Cabaldon asked about possible operations impacts on recreational boating use; Mr. Ott said the three-year study would address those issues. He said they could evaluate locks or other means to allow boats through; they will be reviewing those issues.

Commissioner Broddrick said currently the gates are closed in winter and the boaters have been able to be adaptable under the current management. Commissioner Cabaldon said a seasonal closure is different from dynamic management. He suggested the recreational boating issues should be studied and analyzed at the beginning of the project, rather than as a secondary issue at the end of the fish and water studies. He noted the Cross Channel serves a broader Delta community. Mr. Ott said that was a helpful suggestion.

Commissioner Curry said USC is carrying out a vessel traffic study for department of Boating and Waterways and suggested USC should contact and pass on information to CALFED.

Commissioner Macaulay asked that Mr. Ott return when the results of this first study are available. Mr. Ott agreed and said he will be able to provide information about water quality as well.

Vice Chair Mello asked about passive fish diversions, such as deflectors; Mr. Ott said yes. Vice Chair Mello asked about acoustic barriers; Mr. Ott said that had been studied and will be reported at a public meeting.

The Chairman suggested that staff submit a letter summarizing comments made at the briefing. The Commission approved a motion by Commission McGowan and a second by Vice Chair Mello, by voice vote.

Chairman McCarty suggested to Commissioner Curry that the Delta Protection Commission would be interested in the Vessel Traffic Study.

Commissioner Broddrick noted it had taken about five years to bring the agencies together to carry out the current studies at the Cross Channel and said the research is helping to separate what we think is happening from what is happening. He congratulated Mr. Ott on the work to date.

10. Possible Adoption of Proposed Strategic Plan

Chairman McCarty said the Commission would consider and possibly adopt the draft Strategic Plan. At the Commission's last consideration, the Strategic Plan was sent back for refinement of the Mission statement and the Vision statement. Those have been revised, and recirculated.

Commissioner McGowan said the strategic plan had been revised based on comments at the last meeting and urged adoption by the Commission.

Chairman McCarty asked for public comment; there was none.

On a motion by Commissioner McGowan, and a second by Commissioner Calone, the strategic plan was approved on a voice vote.

Chairman McCarty said the strategic plan could be amended in the future.

Ms Aramburu said she will bring to the Commission a report on implementation of the strategic plan in one year and will use the strategic plan to develop next year's work plan.

11. Update on Readoption of the Policies in the "Land Use and Resource Management Plan for the Primary Zone of the Delta" and Adoption of the Policies as Regulations.

Ms Aramburu stated an additional notice was required regarding the readoption of the Plan, and otherwise she said the Commission is set to vote in December. She thanked those Commissioners who had agreed to attend the meeting. She said that no comments had been received at the three public hearings and said five written comments had been received to date.

12. Adjourn. The meeting was adjourned at 8:50 p.m.